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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Amador)

ROSEMARY KALANI, Plaintiff and Appellant, v. CASTLE VILLAGE, LLC, Defendant and Respondent.	C079905 (Super. Ct. No. 14CV8934)

Robert Kalani's initial complaint in this premises liability action erroneously named Castle *Park*, LLC as a defendant.[1] He subsequently sought and received permission from the superior court to amend his complaint to change the name Castle

[1] After this case was fully briefed, Robert Kalani passed away. Based on a motion by his counsel, we ordered that Rosemary Kalani, in her capacity as successor in interest of the estate of Robert Kalani, be substituted in Robert Kalani's place in this matter. (Cal. Rules of Court, rule 8.36(a).) We will subsequently refer to the Kalanis by their first names in order to avoid any confusion.

Park, LLC to Castle *Village*, LLC. On appeal, Rosemary contends the trial court erred in granting Castle Village's motion for summary judgment on the basis that the change was made after the statute of limitations had run. Because we agree the correction was such that the amended complaint related back to the date Robert's initial complaint was filed, we shall reverse the judgment of dismissal and remand for further proceedings.[2]

I. BACKGROUND

On July 31, 2014, Robert filed this premises liability action naming Castle Park, LLC and Does 1-100 as the defendants. The original complaint alleged that Robert fell and injured himself on defendants' property at 1400 Marlette Street in Ione while using a handicap access ramp. The proof of service indicated the manager of Castle Park, LLC was served with the summons and complaint at 1400 West Marlette Street in Ione. Castle Village concedes this individual is *its* manager.

In November 2014, Robert filed a successful ex parte application pursuant to Code of Civil Procedure sections 472 and 473 for leave to amend the complaint.[3] The application was supported by a declaration from his attorney explaining that the mobile park is operated under the name "Castle Park," and he knew the proper party to the action was Castle Village, LLC, but he mistakenly typed Castle Park, LLC in the complaint instead. The amended complaint changed Castle Park, LLC to Castle Village, LLC and added that the incident took place on September 8, 2012. It was filed on December 18, 2014.

Castle Village answered the amended complaint, and then moved for summary judgment on the basis that the action was time-barred because it was not named as a

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[2] The panel as presently constituted was assigned this matter in October 2018.

[3] Undesignated statutory references are to the Code of Civil Procedure.

defendant until after the two-year statute of limitations had run.[4] Castle Village asserted Robert was not ignorant of its identity as required for Doe allegations and subsequent amendments under section 474.[5] The evidence and separate statement of undisputed facts Castle Village submitted in support of its motion is directed at this undisputed point. The parties agree that Robert's counsel knew the proper party was Castle Village, LLC before the filing of the initial complaint. As relevant to the issues in this appeal, Castle Village also submitted undisputed evidence that the owner of Castle Village, LLC explained in his deposition that Robert "lives in a mobile home commonly known as Castle Park Mobile Home Park, but legally it's Castle Village LLC." Castle Village, LLC and Fujinaka Properties, L.P. each own half of the mobile home park.

Robert opposed the motion on the basis that he had amended his complaint pursuant to section 473, subdivision (a), to correct a mistake in the defendant's name. He submitted additional material facts and supporting evidence in support of his opposition to the motion. It was undisputed that when the complaint was drafted, Robert and his counsel intended to file against Castle Village, the owner and managing entity for the mobile home park where Robert fell. The mobile home park is located at 1400 West Marlette Street in Ione. Castle Park, LLC was never served and never appeared in the action.

Castle Village objected to other additional material facts submitted by Robert, and the trial court sustained each of these objections without stating a specific basis for doing so. The court granted Castle Village's motion for summary judgment. It held that

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[4] Castle Village concedes that if the amendment does relate back to the filing of the original complaint, the action is not time-barred.

[5] "When the plaintiff is *ignorant* of the name of a defendant, he must state that fact in the complaint, . . . and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly . . . ." (§ 474, italics added.)

because Robert was aware of Castle Village's true identity, the first amended complaint did not relate back to the original complaint under section 474. As relevant to this appeal, the trial court also held that section 473, subdivision (a)(1) does not "permit amendment in this instance after the statute of limitations has run. Whether a plaintiff may amend the complaint to change a party's description or characterization 'after the statute of limitations has run depends on whether the misdescription or mischaracterization is merely a misnomer or defect in the description or characterization, or whether it is a substitution or entire change of parties. In the former case an amendment will be allowed; in the latter, it will not be allowed.' [Citation.] Here, [Robert] originally sued a corporate entity that is separate and distinct from CASTLE VILLAGE, LLC. [Robert] amended the complaint after the statute of limitations had run, to substitute an entirely different party. Accordingly, the relation back doctrine may not be invoked and [Robert]'s claim is time-barred."

Judgment was entered in Castle Village's favor, and Robert timely appealed.

II. DISCUSSION

A. Standard of Review

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476; see also § 437c, subd. (c).) On appeal, "[w]e review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill v. Navegar, Inc.*, *supra*, at p. 476.) A defendant moving for summary judgment "bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850; see also § 437c, subd. (p)(2).) The defendant "bears an initial burden of production to make a prima facie showing of the

nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co., supra*, at p. 850.) Once the defendant meets its initial burden, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Id*. at pp. 849-850.)

B. Amendment to Correct a Misnomer

On appeal, Rosemary argues judgment must be reversed because the complaint was amended to correct a misnomer in the name of the defendant pursuant to section 473, subdivision (a)(1), and therefore relates back to the date of the filing of the original complaint. We agree.

Section 473, subdivision (a)(1) allows the trial court to permit a party "to amend any pleading . . . by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect . . . ." As this court has previously explained, "[a]s a general rule, 'an amended complaint that adds a new defendant does *not* relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed.' [Citation.] But where an amendment does not add a 'new' defendant, but simply corrects a misnomer by which an 'old' defendant was sued, case law recognizes an exception to the general rule of no relation back." (*Hawkins v. Pacific Coast Bldg. Products, Inc*. (2004) 124 Cal.App.4th 1497, 1503; see also *Canifax v. Hercules Powder Co*. (1965) 237 Cal.App.2d 44, 57 ["It is well settled that a mere misnomer sought to be corrected after the statute of limitations has run will not bar the action"].)

Castle Village asserts the amendment added a new defendant. We disagree. This court's opinion in *Nisbet v. Clio Mining Co*. (1905) 2 Cal.App. 436 is instructive. There, the plaintiff named Clio Mining *and Milling* Company in the original summons and complaint instead of Clio Mining Company. (*Id*. at p. 437.) Both entities existed and did business in Tuolumne County, but the former owned and operated the Clio mine, while

the later had no connection to the mine. (*Ibid*.) The causes of action set forth in the complaint were for labor performed and wood furnished at the mine. (*Id*. at p. 440.) No officers or agents of Clio Mining *and Milling* Company ever received a copy of either the summons or the complaint. (*Id*. at pp. 440-441.) Conversely, a copy of the summons and complaint were mailed to the office of the secretary of the Clio Mining Company. (*Id*. at p. 440.) We concluded a misnomer had occurred and amendment was proper. (*Id*. at pp. 441-442.) Likewise, here the complaint described the premises owned by Castle Village LLC and service was made on its manager. There apparently is a Castle Park, LLC, but there is no suggestion that whatever this entity is, it has any relationship to this action.[6] The amendment therefore did not add a new defendant, but simply corrected a misnomer by which an old defendant was sued. (*Id.* at p. 440 ["[T]he contention that the Clio Mining *and Milling* Company was the original party defendant upon which summons was served rests entirely on the fact that the words italicized appeared in the name of the defendant as it appeared in the summons and original complaint. Every other fact and circumstance indicates an intention to sue and serve the Clio Mining Company"].) The trial court erred in granting Castle Village's motion for summary judgment.

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6 Castle Village objected to Robert's purported additional material fact that "[i]t is unknown what relation, if any, Castle Park, LLC, has with the parties in this case" as irrelevant. Likewise, Castle Village objected to the statement that "Castle Park, LLC, appears to be a suspended LLC, does not own the property in question, nor is it an insured under the policy which Plaintiff was making a claim to according to the insurance correspondence" as lacking foundation. Nonetheless, Castle Village stated that these purported facts were undisputed. The trial court sustained the objections to both purported facts. We do not address Rosemary's arguments regarding the trial court's rulings on Castle Village's objections to evidence because they are unnecessary to the resolution of this appeal. The only facts necessary for resolution of this appeal are undisputed.

III. DISPOSITION

The judgment is reversed. The matter is remanded for further proceedings consistent with this opinion. Appellant Rosemary Kalani shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

HOCH, J.